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IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for Renewable Northwest Project and American Wind Energy Association

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE
APPLICATION OF IDAHO POWER
COMPANY TO UPDATE ITS WIND
INTEGRATION RATES AND
CHARGES.

Case No. IPC-E-13-22

AWEA AND RNP COMMENTS IN
SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION

Pursuant to Idaho Public Utilities Commission (“IPUC” or “Commission”) Rules of Procedure (“RP”) 56 and 256, Renewable Northwest Project (“RNP”) and American Wind Energy Association (“AWEA”) hereby file these Comments in support of the January 31, 2014, Motion to Dismiss the Application of Idaho Power Company (“Idaho Power” or the “Company”) to Update its Wind Integration Rates and Charges (the “Application”) filed by Cold Springs Windfarm, LLC, Desert Meadow Windfarm, LLC, Hammett Hill Windfarm, LLC, Mainline Windfarm, LLC, Ryegrass Windfarm, LLC, Two Ponds Windfarm, LLC, Cassia Wind Farm LLC, Hot Springs Windfarm, LLC, Bennett Creek Windfarm, LLC, Cassia Gulch Wind Park LLC, Tuana Springs Energy, LLC, and High Mesa Energy, LLC (collectively, “Movants”). Specifically, RNP and AWEA (1) support Movants’ Motion to Dismiss to the extent that it argues for dismissal of Idaho Power’s Application in its entirety, and (2) recommend that the

Commission direct Staff to schedule a series of workshops for interested parties to confer with Idaho Power on its wind integration rates, charges and methodologies prior to the Company submitting any revised application that would affect the wind integration rates assessed against any wind generator qualifying facilities (“QFs”) that may come online in the future.

II. BACKGROUND

Idaho Power’s Application in this proceeding seeks to increase the wind integration rates and charges imposed on both QFs with existing contractual legally enforceable obligations and any future wind generator QFs. To accomplish this, Idaho Power’s Application and accompanying testimony sets forth three methods from which the Commission could choose to implement wind integration charges. Movants are a group of wind-generator QFs, each of which is a party to a Firm Energy Sales Agreement (“FESA”) with Idaho Power that contains fixed avoided cost rates for the duration of each FESA’s 20-year term. Although Movants’ Motion to Dismiss focuses on Method 3, all three of the methods are inconsistent with the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

Movants advance several arguments in support of their Motion to Dismiss: (1) federal law prohibits and preempts unilateral modification of QF contracts that contain fixed-price avoided cost rates calculated at the time the QFs incurred a contractual legally enforceable obligation; (2) Section 210(e) of PURPA and Section 292.602 of the Federal Energy Regulatory Commission’s (“FERC”) regulations implementing PURPA preempt the entire field of ongoing state regulation of wind QFs sized 30 MW and under; (3) Movants’ FESAs do not allow Idaho Power to unilaterally modify the fixed avoided cost rates contained in those contracts, and Movants have not consented to modifying such rates via updates to the Company’s wind

integration charges; and (4) federal law preempts further administrative proceedings that would subject Movants to the adjudicatory process of litigating the merits of Idaho Power's proposed wind integration costs. Movants then recommend the following:

In order to ensure that Movants are not subjected to this preempted burden, the Commission should dismiss Idaho Power's entire Application and allow it to be re-filed without recommending modification of existing contractual legally enforceable obligations. Because Idaho Power's unlawful proposal is so interwoven with the rest of its filing, dismissal of the entire Application is warranted. However, in the alternative, the Commission should dismiss and strike from the record the portions of Idaho Power's Application and testimony that recommend that the Commission alter the rates and terms in existing contractual legally enforceable obligations.

III. COMMENTS

RNP and AWEA support Movants' recommendation that the Commission dismiss Idaho Power's entire Application and allow it to be re-filed without proposing to modify existing contractual legally enforceable obligations. RNP and AWEA generally agree with the legal rationale advanced by Movants in support of dismissing the Company's Application. In lieu of reiterating those arguments, these Comments highlight some of the public policy bases that support dismissal of Idaho Power's entire Application. These Comments also address why it is *not* in the public interest to dismiss and strike from the record only those portions of the Application and testimony identified by Movants as applying to existing contractual legally enforceable obligations. Instead, RNP and AWEA recommend that the Commission dismiss the Application in its entirety and convene a series of workshops for interested parties to confer with Idaho Power on its wind integration rates, charges and methodologies prior to the Company

submitting a new application affecting the integration rates of wind QFs that currently do not have a legally enforceable obligation.

1. Dismissing the Company's Entire Application Is in the Public Interest.

Dismissing the Company's entire Application is in the public interest as it would send a strong signal regarding the sanctity of contracts and the importance of fostering a business climate that is conducive to new investments while also respecting existing investments.

Dismissing the Company's entire Application would serve the public interest by reaffirming the importance of the sanctity of contracts, including Movants' FESAs. Movants' Motion to Dismiss addresses the specific PURPA provisions and related FERC regulations that require adherence to the terms of the contract or other legally enforceable obligation between a QF and the purchasing utility; such terms include the avoided cost rate calculated at the time of contracting. This principle of respecting the QFs' contracts has deeper roots than PURPA; indeed, the sanctity of contracts is a cornerstone of American law that is reflected in numerous legal opinions as well as the Idaho Constitution. Neither the Idaho Legislature nor state agencies may infringe upon existing contracts. Allowing Idaho Power to advance an Application to unilaterally amend the avoided cost rates reflected in existing QFs' contracts would constitute an impermissible infringement upon such contracts.

Dismissing the Company's Application would also serve the public interest in that it would emphasize the importance of cultivating a business climate that is conducive to investment. For businesses to have the confidence to invest in Idaho, they must have some level of certainty that their contracts will remain intact. Allowing Idaho Power to unilaterally amend existing contracts does not offer business certainty to those that would invest in Idaho. Not only

does Idaho Power's Application act as a deterrent to would-be investors, it also destabilizes those who have already invested significant sums of money to develop projects in Idaho. As noted in their Motion to Dismiss, Movants have already had to respond to several attempts by the Company to diminish the value of their investments in the state, including the Company's recent attempt to unilaterally amend PURPA contracts so that it would have a right to "economic curtailment." Having to defend against these repeated attempts to encroach on existing contracts is costly, time-consuming, and bad for business. Demonstrating the importance of adhering to existing contracts would serve the public interest by supporting new and existing investments in Idaho.

2. In Lieu of Partial Dismissal, the Commission Should Direct Idaho Power to Collaborate with Interested Parties Before Re-filing its Application.

Dismissing only part of the Application and testimony would not accomplish the objectives discussed in the previous section, and would suffer from some of the legal deficiencies identified in Movants' Motion to Dismiss. Instead, RNP and AWEA encourage the Commission to dismiss the entire Application and direct Staff to schedule a series of workshops to address the issues raised in the Application and Wind Integration Study prior to Idaho Power re-filing an application that would apply to new wind QFs.

As an alternative to dismissing the entire Application, Movants propose striking out Method 3 from the Company's Application and testimony; however, Methods 1 and 2 are also inconsistent with PURPA. Method 3 poses the most apparent violation, as it would spread increased integration costs equally across all PURPA generators—new and existing—thereby raising the rates of existing QFs, in violation of their FESAs. The situation is more nuanced with Methods 1 and 2, but the flaws nonetheless exist. For example, Methods 1 and 2 would change

the avoided costs paid to future wind QFs based upon revenue shortfalls related to existing QFs' contracts. Thus, even though Methods 1 and 2 purport to keep existing QFs whole, the methodologies still link the integration costs that would be imposed on future QFs to the "unrecovered" costs associated with existing QFs. However, in assessing integration costs on new wind QFs, the Company's methodology should be limited to calculating the forward-going incremental costs of integrating those new QFs—not the incremental costs associated with new QFs plus the revenue shortfalls related to integrating any existing projects. Because Methods 1 and 2 take the latter approach, removing existing QFs from the Application would not remedy Idaho Power's conflating of current system costs with forward-going incremental costs. As a result, dismissal of the Company's entire Application is warranted, as Idaho Power must necessarily rethink its approach and file a new application that comports with PURPA.

Given the complexity and history, the issues raised in Idaho Power's Application would be best addressed—at least in the first instance—through a series of workshops to be held prior to the Company re-filing its application. This approach would have several benefits. First, it would allow for brainstorming and collaboration toward a solution that is more palatable across a wider range of stakeholders, as opposed to quarrelling over complex issues in an adversarial setting. Second, it would allow interested parties to allocate time and resources on a more voluntary basis, as opposed to the situation in this proceeding, in which parties whose contracts are at risk of being unilaterally amended must participate to protect their interests. Third, it may be a more efficient and cost-effective way to resolve the issues raised in this docket than going


through a contested case.¹ Accordingly, RNP and AWEA request that the Commission provide an opportunity, through a series of issue workshops, for Idaho Power and interested parties to collaborate on the issues raised in the Company's Application.

IV. CONCLUSION

WHEREFORE, RNP and AWEA respectfully request that the Commission (1) grant Movants' Motion to Dismiss Idaho Power's entire Application, and (2) direct Staff to schedule a series of workshops to address the issues raised in the Application and Wind Integration Study prior to Idaho Power re-filing an application that would apply to only new wind QFs.

DATED this 7th day of February, 2014

K&L Gates LLP

By 
Teresa Hill
Attorney for RNP and AWEA

¹ RNP and AWEA requested a technical hearing in this case because we do not believe that the issues can be adequately addressed with a Modified Procedure (as requested by the Company); however, we believe that issue workshops outside of a contested case could be a more productive way to discuss the issues that would otherwise be addressed in a formal proceeding through discovery, parties' testimony, cross-examination, etc. In the event that the Commission does not grant Movants' Motion to Dismiss, we continue to support the need for a technical hearing, discovery, etc. in this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2014, a true and correct copy of the foregoing RENEWABLE NORTHWEST PROJECT AND AMERICAN WIND ENERGY ASSOCIATION COMMENTS IN SUPPORT OF MOTION TO DISMISS, Case No. IPC-E-13-22, was served by electronic mail and U.S. Mail, postage prepaid, to:

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DATED this 7th day of February, 2014.



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